200011061

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:INTL:Br4-PLR-110893-99
Date:
DEC 22 1999

Legend

P =

S =

A =

B =

C =

D =

Business T =

Country Z =

Date U =

Date V =

Date W =

Date X =

PLR-110893-99

PLR1 =

Year Y =

This responds to your June 15, 1999 letter requesting a ruling confirming that the election to treat A, B, C and D as domestic corporations under section 1504(d) of the Internal Revenue Code ("Code") will be unaffected by a recent amendment to Country Z's law. Additional information was provided on November 13, 1999 and December 20, 1999.

The ruling contained in this letter is predicated upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

P is a domestic corporation that owns directly or indirectly all outstanding shares of S. S is a domestic corporation that owns directly or indirectly all outstanding shares of A, B, C, and D (the "ABCD Group"). A, B, C, and D are Country Z corporations engaged in Business T in Country Z. Country Z is a country that is contiguous with the United States. P is the common parent of an affiliated group of corporations filing a consolidated U.S. income tax return. P's affiliated group currently includes S and the ABCD Group.

Prior to Date X, Country Z's law prohibited a foreign organization from conducting Business T in Country Z through a branch, *i.e.*, through an entity not organized under the corporate laws of Country Z. In order to operate Business T in Country Z, S incorporated A, B, C, and D under the laws of Country Z. S also made an election under section 1504(d) of the Code to have A, B, C, and D treated as domestic corporations. (Subsequently, P became the common parent of the affiliated group.) For the taxable years commencing in Year Y to the present, either P or S was the common parent of the group that included A, B, C, and D. By making a section 1504(d) election, A, B, C, and D were includible corporations for purposes of section 1504(b) and, thus, eligible to be members of the affiliated group.

On Date X, Country Z amended its law affecting Business T. Under the amended law, certain foreign organizations (*i.e.*, organizations not incorporated under the laws of Country Z) may apply for an order from an agency of Country Z permitting

the foreign organization to conduct Business T through a branch in Country Z . On Date U, P applied for an order permitting S to conduct Business T through a branch in Country Z. On Date V, the Country Z agency responded to P's Date U request by letter informing P that it was "not prepared to conclude that [S] meets the criteria noted in [the applicable section of the relevant law.]" (S was not permitted to conduct the business of any member of the ABCD Group.) P has provided a copy of the Date V letter.

Section 1501 permits an affiliated group of corporations to make a consolidated income tax return with respect to the income of the members of the affiliated group. The affiliated group may include one or more chains of "includible corporations." See I.R.C. § 1504(a)(1). Generally, an includible corporation is any corporation, except, *inter alia*, a foreign corporation. See I.R.C. § 1504(b)(3). However, under section 1504(d), certain contiguous country corporations that are subsidiaries of domestic parent corporations may, upon the election of the parent corporation, be treated as domestic corporations for purposes of subtitle A of the Code. An election under section 1504(d) enables a parent corporation to include in its affiliated group eligible contiguous country corporations.

In order to make a section 1504(d) election, the capital stock (exclusive of the directors' qualifying shares) of the contiguous country corporation must be 100 percent owned or controlled (directly or indirectly) by the domestic parent corporation. The contiguous country corporation also must be maintained solely to comply with the law of a country contiguous to the United States ("foreign law") as to title or operation of property. The contiguous country corporation need not have been formed to comply with the foreign law, provided that is maintained solely for that purpose during the time for which the election is effective.

On Date W, the IRS' Office of Associate Chief Counsel (International) ruled in private letter ruling (PLR)1 that, pursuant to section 1504(d), A, B, C, and D, were qualified contiguous country corporations under section 1504(d) and would be treated as domestic corporations for purposes of subtitle A of the Code, provided that S complied with certain requirements under section 367(b).

S requests a ruling stating that the determination made in PLR1 issued by the IRS on Date W will be unaffected by the aforementioned amendment to Country Z law.

Under the aforementioned amendment, an order from the applicable Country Z agency is a condition precedent to permitting a foreign (i.e., non-Country Z) organization to conduct Business T through a branch in Country Z. P, on behalf of S, applied for such an order, but the request for the order was denied. S is, therefore, not entitled to conduct Business T through a branch in Country Z and may continue to do so only through Country Z corporations. Thus, A, B, C, and D are still maintained solely

to comply with Country Z law. Consequently, and based upon the representations made and the information submitted, the determinations made in PLR1 issued on Date W are not affected by the aforementioned amendment to Country Z law.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Philip L. Tretiak
Senior Technical Reviewer, Branch 4
Office of Associate Chief Counsel
(International)